

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
<b>Caption in Compliance with D.N.J. LBR 9004-2(c)</b>	
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<b>ATTORNEYS FOR RUSHMORE CROSSING, LLC</b>	
In re:  BED BATH & BEYOND INC., <i>et al.</i> ,  Debtors. <sup>1</sup>	Chapter 11  Case No. 23-13359 (VFP)  Judge: Vincent F. Papalia  (Jointly Administered)

**DECLARATION OF MIKE SANCHEZ, GENERAL COUNSEL OF RUSHMORE CROSSING, LLC IN OPPOSITION TO DEBTORS' PROPOSED SALE, AND ASSUMPTION AND ASSIGNMENT OF REAL PROPERTY LEASE**

I, Mike Sanchez, declare as follows under penalty of perjury:

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<sup>1</sup> The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number is 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of the Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

1. I am Senior Associate Counsel of Fidelis Realty Partners (“**Fidelis**”), the property management company and affiliate of Rushmore Crossing, LLC (“**Rushmore**”), creditor and party-in interest, in this bankruptcy matter.
2. I have served in this capacity since October 2018. As such, I have knowledge of the facts set forth herein based on my personal knowledge and/or my review of Rushmore’s business records, which are maintained in the ordinary course of its business.
3. I submit this Declaration in support of Rushmore’s objection to the proposed sale, assumption and assignment, and cure amount of the real property lease for premises located at 1365 Eglin Street, Rapid City, South Dakota (the “**Premises**”).
4. Rushmore is the owner of the Premises and the Landlord under a real property lease (“**Lease**”) for the Premises, dated May 14, 2010, with Bed Bath & Beyond Inc. (“**Debtor**”). Annexed hereto as **Exhibit A** is a true and accurate copy of the Lease. The Premises is located in a commercial shopping center (“**Shopping Center**”). A copy of the legal description of the Shopping Center is attached hereto as **Exhibit B**.
5. Pursuant to Section 13.3.1 of the Lease “Tenant shall honor certain exclusives granted by Landlord to certain tenants or occupants in the Shopping Center<sup>2</sup> pursuant to the terms of the leases which have been executed prior to the Effective Date (hereinafter, “**Existing Exclusives**”)...shall not sublease, occupy or use all or any portion of the Premises to be occupied or used in violation of any such Existing Exclusive.” Rushmore granted certain exclusives to other tenants in which it agreed not to lease or sell space in the Premises or agree to any assignment or subletting to any tenant whose primary or principal use was contrary to that of the tenants’ exclusive use.
6. I have worked on land use issues involving the Shopping Center with Rushmore, in regard to, among other things, managing and securing restrictive declarations on site, parking variances, etc. Through such representation, and in my capacity as Senior Associate Counsel of Fidelis, I am familiar with the Shopping Center, its zoning status, any restrictive covenants, and the special permits governing approved use on the Premises.
7. The Shopping Center is a commercial retail center located at 1365 Eglin Street, Rapid City, South Dakota, and consists of 800,000 of square feet of retail space. The major tenants of the Shopping Center are Target, Ross Dress for Less, Boot Barn, Bed Bath & Beyond, and Sam’s Club.<sup>3</sup> It has ample parking in accordance with all local laws and requirements.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Objection.

<sup>3</sup> Although the Shopping Center includes the major tenants, Rushmore does not own the parcels for Target, Sam’s Club, or Ross but owns parcels whose lease contain restrictions akin to the Debtor’s lease.

8. I am aware that the Debtor has filed for bankruptcy and that, as part of this bankruptcy, a potential purchaser (“**Assignee**”) has been identified at auction for the leasehold interest of Rushmore at the Shopping Center.
9. Absent the Assignee agreeing that it will abide by the Existing Exclusives, allowing the assumption and assignment of the Lease would likely result in a breach of one or more leases with other tenants of the Shopping Center.
10. The Assumption Notice lists the Debtors’ proposed cure amount incorrectly. The cure amount (“**Cure Amount**”) of \$68,348.89 is the current amount which should be used in any final order authorizing the assumption of the Lease and/or establishing the Cure Amount, plus any additional unpaid amounts which accrue and remain unpaid prior to the date of assumption. This amount includes post-petition charges which remain unpaid, including any charges which may accrue prior to the date of assumption.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: July 11, 2023  
Houston, Texas

By: /s/ Mike Sanchez  
Mike Sanchez  
Senior Associate Counsel  
Rushmore Crossing, LLC